

# 406-418 SAN MATEO AVENUE DEVELOPMENT PROJECT – APPEAL OF DIRECTOR'S DETERMINATION RELATED TO PARKING

Item 6b: Appeal of Community and Economic Development Director's  
Determination Related to the Parking Exception for the 406-418 San Mateo  
Avenue Development Project

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## City Council Meeting

April 9, 2019

Darcy Smith,  
Community & Economic Development Director



## Approved Project

- October 2014 - City Council approved the development
  - 83 residential units
  - Five individual tenant spaces with either specialty restaurant and/or retail uses in approximately 6,975 square feet
  - Sub-grade parking garage containing 106 parking spaces for the residential uses
  - No on-site parking for specialty restaurant and/or retail uses
- September 2016 - Building permits issued

# Approved Project



# Presentation Agenda

- Objective
- Appeal Process
- Background
- Analysis of Appeal
- Action on Appeal
- Questions

## Objective of Presentation

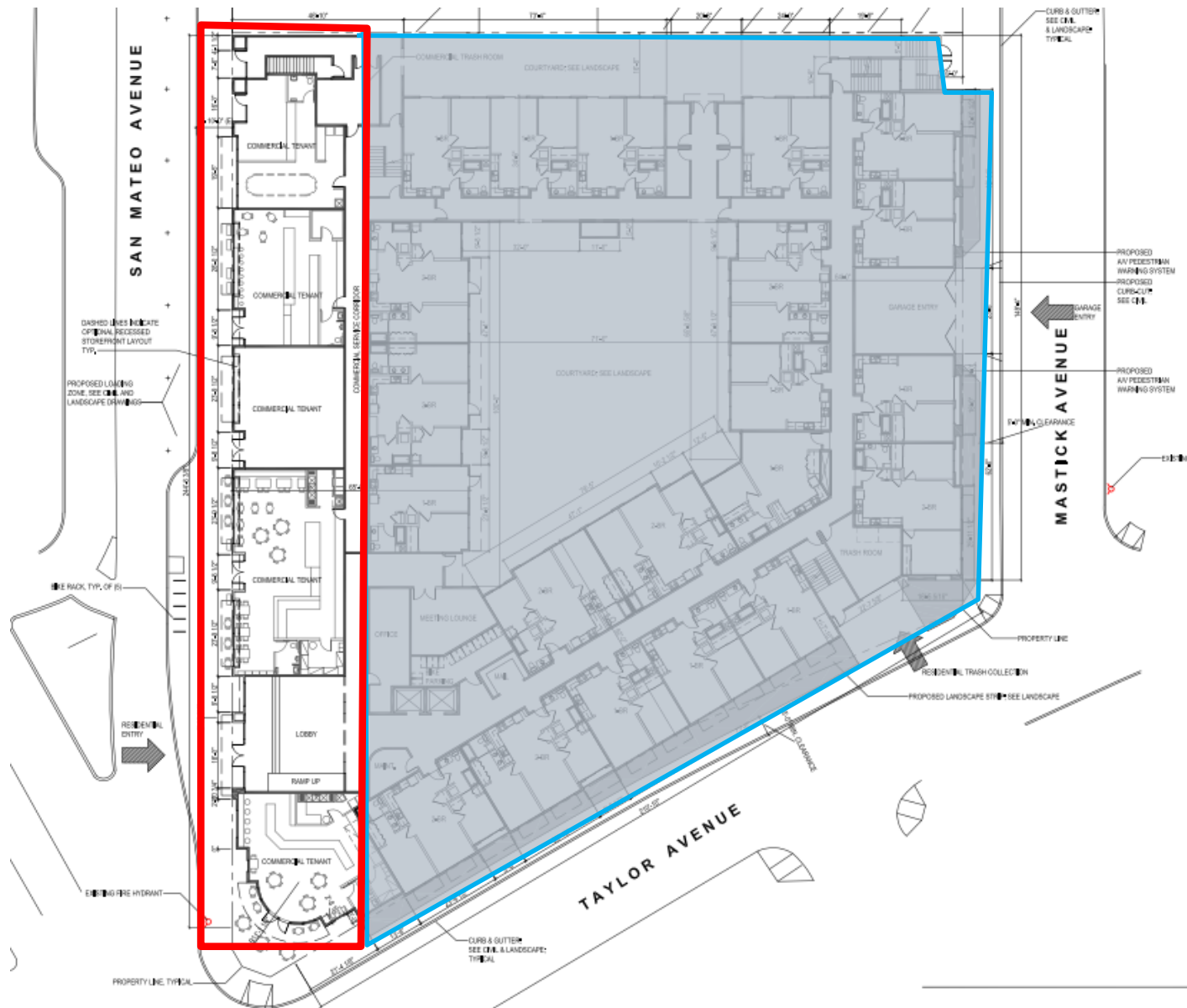
- Present Information:
  - Relevant Facts
  - Rationale for Determination
  - Options for City Council to Consider

# Appeal Process

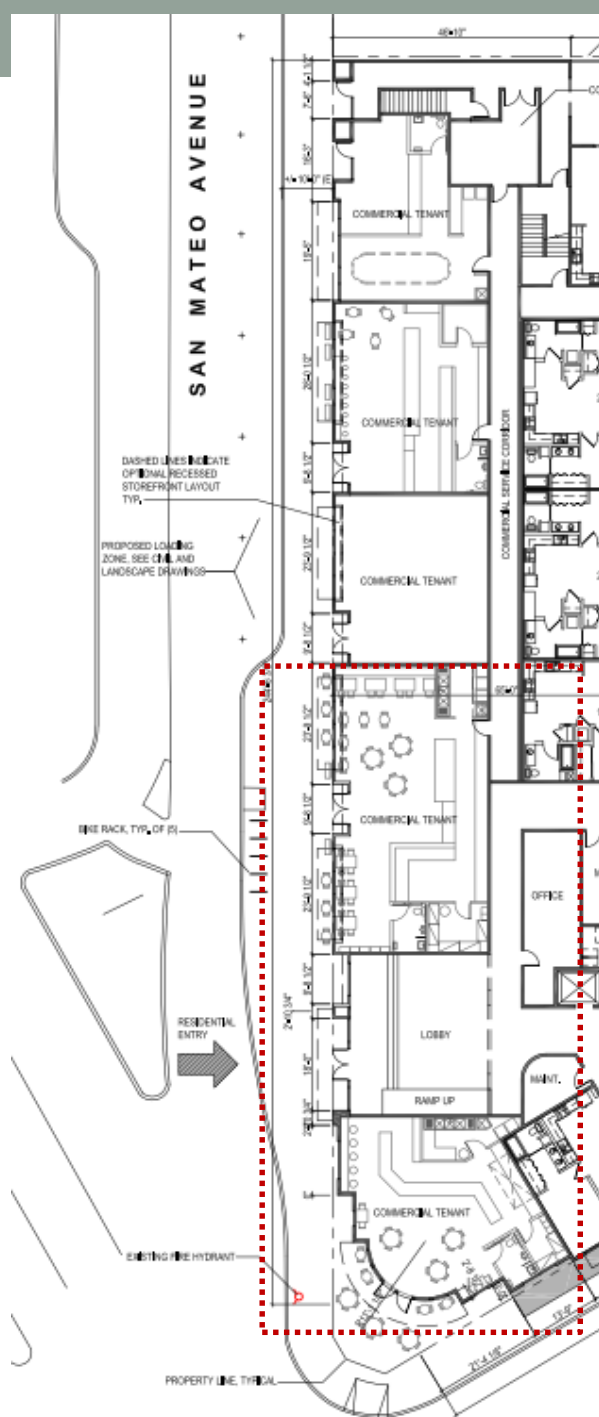
- Staff Presentation
- Questions from Councilmembers on the Staff Presentation
- Appellant's oral presentation
- Questions from Councilmembers on the Appellant's presentation (if necessary)
- Public comment
- Staff response to appellant's presentation (if necessary)
- City Council deliberation and action
  - Grant the Appeal
  - Deny the Appeal
  - Continue for More Information

## Summary: Key Facts Leading to the Appeal

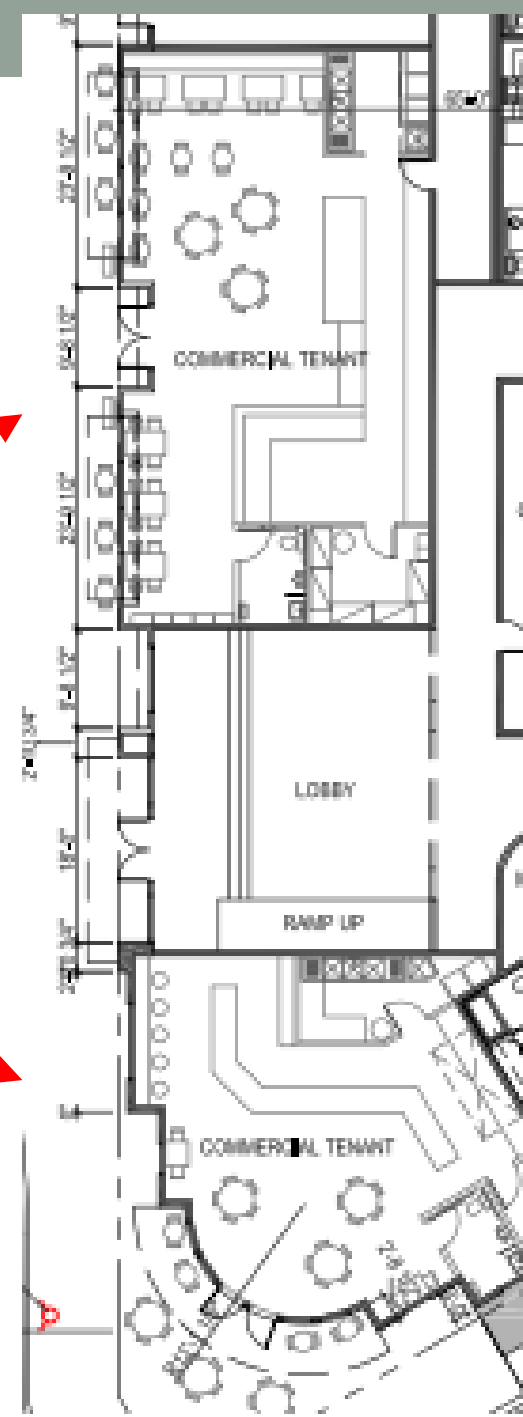
- July 2018 - City staff contacted by Seapot representatives
- August to October 2018 - Meetings between staff, the developer and Seapot representatives
- November 2018 - Staff determination letter detailed City process required to seek approval of the restaurant
- January 2019 - Staff determination appealed







Specialty  
Restaurant  
Floor plans  
shown



## Background – Condition of Approval

- Summary of Hearing filed to vests the project approvals.
- Project Conditions of Approval run with the land, and any and all successors in interest of the property.
- Condition of Approval #3 states:

“The project shall be built according to plans reviewed by the Planning Commission on October 7, 2014 and approved by the City Council on October 28, 2014 labeled “The Plaza 406-418 San Mateo Avenue”, except as required to be modified by these Conditions of Approval. Any modification to the approved plans shall require review and approval by the Community Development Director.”

## Approved Parking Exception

- Parking Exception required because proposed on-site parking spaces as proposed did not meet the Zoning Code requirements
- Parking Exception was granted on the analysis that the parking requirement for the five individual tenant spaces with either specialty restaurant and/or retail uses based on Zoning Code Chapter 12.100 “Off-Street Parking and Loading” would range from 23 to 38 parking spaces depending on the proposed land uses

## Land Use Category: Retail (Approved in Project)

- Retail Business “The retail sales of any article, substance or commodity for the profit or livelihood, conducted within a building but not including the sale of lumber or other building materials or the sale of used or second-hand goods or materials of any kind.”

Land Use Category: Specialty restaurant  
(Approved in Project)

- “Specialty restaurant” means a retail establishment which primarily sells food of a single or limited variety, that may normally be consumed at, or soon after, the time of purchase irrespective of whether the establishment provides an area for on-site consumption. Such establishments include doughnut shops, ice cream stores or parlours, delicatessens and similar food establishments.

Land Use Category: Restaurant  
(Not Approved in Project)

- “Restaurant” means a retail establishment which prepares and sells food and/or drinks for consumption primarily upon the premises, which has fifty percent or more of the premises’ floor area used for table seating and/or counter seating. Those establishments preparing and selling food which have some or all of its table seating area outside and adjoining the premises’ structure must include that outside seating area in calculating the premises’ usable floor area.

## Issued Building Permit

- September 2016 - Building permits issued
- Anticipated future tenant improvement building permit applications for retail and/or specialty restaurants
- Modifications reviewed and approved by the City with building permit
- Did not include the addition of a sit-down restaurant

## Large Sit-Down Restaurant Use

- July 2018 - City staff were contacted by Seapot representatives
- August to October 2018 - Meetings between staff, the developer and Seapot representatives



## Director's Determination

In November 2018 Staff:

- Notified of Seapot building permit application
- Completed full review of the project history and record
- Issued a formal determination letter on approval process.

## Director's Determination

- i. Proposed restaurant is a permitted land use
- ii. Does not conform to the Parking Exception
- iii. Parking Exception was approved on the basis that the proposed ground floor uses would be occupied by individual retail or specialty restaurant tenant spaces, and not a single sit-down full service restaurant.

## Director's Determination

- iv. Does not Comply with Approved Plans
- v. Director determined that change requires a Parking Exception Modification – reviewed at a public hearing by the Planning Commission
- vi. Staff unable to approve a building permit for Seapot

## Appeal

- Property owner representative filed an appeal pursuant to San Bruno Municipal Code Section 1.32 on January 28, 2019, requesting City Council review of the determination.
- Appeal letter maintains that the parking exception allows a proposed sit-down restaurant.

## Analysis

- The change to a single sit-down restaurant is a material change.
- The property owners do not have the privilege to make changes to the project that are not consistent with the project approvals/record.
- Past modifications approved by City did not include changes to uses approved by the Parking Exception

## Appeal Analysis

- All land uses and businesses in the City are required to provide parking on site.
- Parking Exception is approved for a specific use(s)
- For this project- approval was for either specialty restaurant and/or retail uses
- Sit-down Restaurant is a Different Land Use Category
- Parking requirement is higher for the sit-down restaurant.
- Plans were not approved for a sit-down restaurant.

## Planning Commission Meeting October 7, 2014

Following statement made by the applicant of Signature Properties:

- 29:27: “**These retail spaces are not designed for sit down restaurants.** We do not have huge venting...ours are more café, ice cream oriented, service oriented...there are many, many other locations on the main drag there where depths and big kitchens can be accommodated in existing spaces.”
- 31:08: “We have completely fully enclosed controlled trash areas for these types of **sit-down, casual take out areas**...We don’t have grease or that type of thing.”

## Planning Commission Meeting October 7, 2014

In response to a question from Commissioner Biasotti (“What type of retail are you expecting or proposing or hoping for?”), the applicant said:

- 35:06: “Whatever is allowed under the CBD. By design, we have not designed big kitchens with big vents.”



## Planning Commission Meeting October 7, 2014

In response to a question from Commissioner Johnson regarding how the commercial tenants, even if they don't have big kitchens, will remove their garbage, the applicant said:

- 49:26: **“So somebody can’t come in and say I want a full gas kitchen, I want six burners.”**

## City Council Meeting October 28, 2014

In response to a question from a Councilmember Ibarra, the applicant said:

- 1:39:50: “I did want to point out that the retail being proposed is not a formal sit down white table cloth restaurant. These [spaces] are not designed for a large kitchen, if you will, so that you’ve got this huge mass of people coming. It’s more café, take away, gathering place, central purpose, so very much complementary to the rest of the main street there.”

## Building Permit Submittal

- A single sit-down restaurant and bar with
  - 6,795 square feet
  - Occupancy load of 220 persons
  - Approximately 198 seats
- Commercial kitchen with appliances and features required for a large sit-down restaurant.

## Appeal Conclusion

Sum total of evidence in the project record is that the parking exception that was approved does not permit a sit-down restaurant to replace the individual tenant spaces approved for either specialty restaurant and/or retail uses.

## Staff Recommendation

- Deny the appeal and uphold the Community and Economic Development Director's Determination Related to the 406-418 San Mateo Avenue Development Project

# QUESTIONS?

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